

# rules and regulations

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[6325-01]

## Title 5—Administrative Personnel

### CHAPTER I—CIVIL SERVICE COMMISSION

#### PART 213—EXCEPTED SERVICE

##### Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service three positions of Battalion Officer, three positions of Regimental Officer, and one position of Training Administrator, at the U.S. Merchant Marine Academy, Maritime Administration. These positions replace the seven positions of company officer which were previously excepted. This exception is granted because it is impracticable to competitively examine for these positions.

EFFECTIVE DATE: July 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3114 is amended to read as follows:

§ 213.3114 Department of Commerce.

\* \* \* \* \*

(h) *Maritime Administration.* \*\*\*

(10) U.S. Merchant Marine Academy, positions of Professors, Instructors, and Teachers; including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,  
JAMES C. SPRY,  
*Executive Assistant  
to the Commissioners.*

[FR Doc. 78-19776 Filed 7-17-78; 8:45 am]

[3410-02]

## Title 7—Department of Agriculture

### CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

#### PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

##### Administrative Determination of Who Is a Responsibly Connected Person

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The rules setting forth the administrative procedures for determining who is a responsibly connected person under the Perishable Agricultural Commodities Act are being revised to provide for the designation of officials for Packers and Stockyards, Agricultural Marketing Service as Presiding Officer.

EFFECTIVE DATE: July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert M. Grainger, 202-447-5251.

SUPPLEMENTARY INFORMATION: Section 47.5 is revised to delete reference to §§ 47.26 through 47.43, pertaining to disciplinary proceedings. Disciplinary proceedings under the Perishable Agricultural Commodities Act are included in the rules of practice governing formal adjudicatory administrative proceedings instituted by the Secretary effective February 1, 1977 (42 FR 743; 7 CFR 1.130 through 1.151).

There are minor revisions in wording to accommodate persons not represented by counsel.

These rules changes are procedural only. The revision of the rules does not change the procedures as previously published to an extent that adversely affects any person's rights to dispute his or her connection with a licensee under the act. It is necessary that these rules become effective immediately because there are presently several cases pending which require resolution as soon as possible. There-

fore, it is found for good cause that it is unnecessary and impracticable to give notice of proposed rulemaking or to provide a 30-day notice prior to the effective date.

Accordingly, this part is revised as follows:

1. Section 47.5 is revised to read as follows:

§ 47.5 Scope and applicability of rules of practice.

Sections 47.6 through 47.25 shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.47 through 47.68 shall be applicable to the proceedings for determining whether a person is responsibly connected with a licensee under the Perishable Agricultural Commodities Act. Sections 47.1 through 47.5 and § 47.46 shall be applicable to all proceedings under §§ 47.6 through 47.25 of these regulations in this part. Sections 47.1 and 47.2, except for § 47.2 (i) through (r), shall be applicable to all proceedings under §§ 47.47 through 47.68 of the regulations in this part.

In addition, except to the extent they are inconsistent with the provisions of 7 CFR 1.130 through 1.151, 7 CFR 47.1 through 47.5 and § 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the act pursuant to 7 CFR 1.130 through 1.151.

1. In the table of contents for part 47, the entries for §§ 47.47 through 47.68 are revised as follows:

RULES APPLICABLE TO THE DETERMINATION AS TO WHETHER A PERSON IS RESPONSIBLY CONNECTED WITH A LICENSEE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Sec.	
47.47	Additional definitions.
47.48	Scope and applicability.
47.49	Determinations.
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47.51	Requests.
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47.55	Order of proceeding.
47.56	Powers of presiding officer.
47.57	Who may act in absence of the presiding officer.
47.58	Evidence.
47.59	Filing transcripts and exhibits.
47.60	Transcripts.



Sec.

- 47.61 Proposed findings of fact, conclusions and decision.
- 47.62 Presiding officer's decision.
- 47.63 Petition for review.
- 47.64 Administrator's order.
- 47.65 Filing; number of copies.
- 47.66 Service; proof of service.
- 47.67 Computation of time.
- 47.68 Extensions of time.

Sections 47.47 through 47.68 are revised as follows:

#### § 47.47 Additional definitions.

The following definitions, which are in addition to those in 7 CFR 47.2 (a) through (h), shall be applicable to proceedings under 7 CFR 47.47 through 47.68:

(a) "Administrator" means the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture.

(b) "Regulatory Branch" means the Regulatory Branch of the Division.

(c) "Chief" means the Chief of the Regulatory Branch, or any officer or employee to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated by the Chief, to act in such capacity.

(d) "Presiding Officer" means the Deputy Administrator, or Assistant Deputy Administrator, or Director of Packer and Poultry Division, or Director of Livestock Marketing Division for Packers and Stockyards, Agricultural Marketing Service.

(e) "Petitioner" means any person to whom notice of being responsibly connected has been given, by the Chief, and who files a petition contesting the Chief's determination and requesting a final decision that petitioner is not responsibly connected.

(f) "Decision" means the presiding officer's finding of facts and conclusions of law, as well as the reasons or basis therefor. This decision is non-reviewable as to the finding of facts, but may be reviewable as to the conclusions of law by the Administrator.

(g) "Petition for Review" means the document filed requesting review by the Administrator of the presiding officer's decision.

#### § 47.48 Scope and applicability.

These rules govern the determination of whether a person is responsibly connected with licensees under the Perishable Agricultural Commodities Act of 1930, as amended, or with persons whose license issued under the act has been suspended, revoked, or terminated or with persons who transact business subject to the act, but fail to obtain the required license.

#### § 47.49 Determinations.

(a) The Regulatory Branch shall determine whether a person was at the time in issue responsibly connected with a licensee whose license is subject

to suspension, revocation, or termination or which is subject to having the facts and circumstances of violations of the act published. Such determination shall be made on the basis of license records on file with the Regulatory Branch, and such other information as may be available.

(b) Upon determining that a person was responsibly connected at the time in issue with a licensee which is subject to the suspension or revocation of its license, or which is subject to having the facts and circumstances of violations of the Act published, and that the employment status and licensing of such person may be restricted, the Regulatory Branch shall notify the person in writing of his or her status and of any employment and licensing restrictions resulting therefrom.

(c) If a person believes he or she was not responsibly connected with a licensee at the time in issue, he or she may submit the reasons for such belief in written form, along with all pertinent documents, within 30 days of the receipt of such notification to the Chief, who will promptly review the matter and advise the person in writing of the Chief's determination and the reasons for reaching such determination.

(d) Within 30 days of receipt of notification of the Chief's determination, a person who disagrees with such determination may file a petition with the Administrator for a review proceeding and final decision, along with a statement as to why he or she believes the Chief's determination was incorrect, and may, if desired, request an oral hearing.

(e) Upon the filing of a petition with the Administrator as provided in paragraph (d) of this section, the Administrator shall designate a presiding officer as set forth in § 47.47(d).

(f) The presiding officer will order that an oral hearing be held if one is requested by the petitioner, or if the presiding officer otherwise determines an oral hearing is necessary. Any such hearing shall be held at a location convenient to the petitioner. In all cases in which there is an oral hearing, the Presiding Officer shall require the petitioner to appear in person for the purpose of oral testimony and examination. A verbatim record shall be made of the hearing. In the event an oral hearing is neither requested nor ordered, the presiding officer shall provide the petitioner a copy of the official file, and give the parties an opportunity to submit documents and other evidence to support their positions, as well as written arguments pertaining thereto.

#### § 47.50 Designation of parties for purposes of the proceeding.

(a) The person who challenges the Chief's determination of responsible

connection shall be designated the petitioner.

(b) The Agricultural Marketing Service shall be designated the "Agency."

#### § 47.51 Requests.

(a) All requests should be filed with the presiding officer, who shall rule upon them.

(b) Within 15 days after service of any written request, or within any longer period fixed by the presiding officer, the opposing party may file an answer to the request if it so desires.

#### § 47.52 Consent orders.

At any time after the institution of the review proceedings, petitioner may withdraw his or her petition. Such withdrawal shall be final, and have the effect of a consent to a decision that petitioner was responsibly connected during the time in issue.

#### § 47.53 Notice of time and place of hearing.

Upon assignment of the matter for an oral hearing, the presiding officer shall notify the parties by serving them with copies of the notice of hearing, stating the time and place of such hearing, shall make the official file a part of the records of the proceeding, and shall provide the petitioner with a copy of the official file. The parties will be notified as soon as possible of any change in the time and place of hearing.

#### § 47.54 Appearances.

(a) The petitioner shall appear in person and may be accompanied by counsel.

(b) The failure of a petitioner to appear at a hearing, after being duly notified of the hearing, shall constitute a waiver of petitioner's right to present evidence and a withdrawal of the petition. Such withdrawal shall be final and have the effect provided for in Section 47.52.

#### § 47.55 Order of proceeding.

Except as may be determined otherwise by the presiding officer, the petitioner shall proceed first at the hearing.

#### § 47.56 Powers of presiding officer.

The presiding officer shall have the power to:

(a) Rule upon requests, and accept requests for withdrawal or dismissal of the petition;

(b) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Examine witnesses;

(e) Admit or exclude evidence;



(f) Hear oral argument;

(g) To issue findings of fact, and conclusions of law, and render a decision as to whether the petitioner is responsibly connected. The findings of fact shall be final and not subject to review;

(h) Do all acts and take measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding.

**§ 47.57 Who may act in the absence of the presiding officer.**

In the absence or inability of the presiding officer to act, the powers and duties to be performed in connection with a proceeding may be assigned by the Administrator to another presiding officer.

**§ 47.58 Evidence.**

(a) *General.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the presiding officer, be examined separately and apart from all other witnesses except those who may be parties to the proceeding. The presiding officer shall admit all relevant and material evidence, except evidence which is unduly repetitious.

(b) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he or she shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate except as ordered by the presiding officer. The ruling of the presiding officer or any objection shall be a part of the transcript. Only objections made before the presiding officer may subsequently be relied upon in the proceeding.

(c) *Records of the Department.* A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of official duty and relevant and material to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.

(d) *Exhibits.* Except where the presiding officer finds that the furnishing of copies is impracticable, copies of each exhibit, in addition of the original, shall be filed with the presiding officer for the use of the other parties to the proceeding.

(e) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided*, That the

parties shall be given adequate notice, at the hearing or by reference in the presiding officer's decision or otherwise, of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(f) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. The presiding officer shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Administrator decides that the presiding officer's ruling excluding the evidence was erroneous, the hearing shall be reopened to permit the taking of such evidence.

**§ 47.59 Filing transcripts and exhibits.**

As soon as practicable after the close of the hearing, the presiding officer shall certify an original and two copies of the transcript of testimony, and the original and two copies of exhibits introduced in evidence at the hearing. The presiding officer shall attach to the original transcript of the evidence a certificate stating that the transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as specified, and that the exhibits are all the exhibits introduced at the hearing, with any exceptions specified. A copy of such certificate shall be attached to each of the copies of the transcript and exhibits.

**§ 47.60 Transcripts.**

Parties to the proceeding who desire a copy of the transcript of the hearing may place orders at the hearing with the reporter who will furnish and deliver such copies direct to the purchaser upon payment therefor at the rate per page provided by the contract between the reporter and the Department for such reporting service.

**§ 47.61 Proposed findings of fact, conclusions and decision.**

Within such time as the presiding officer shall prescribe, each party may file with the presiding officer proposed findings of fact and conclusions and a brief in support thereof. A copy of each such document filed by a party shall be served upon the other party or parties by the presiding officer.

**§ 47.62 Presiding officer's decision.**

The presiding officer, shall prepare his or her decision. A copy of such de-

cision shall be served by the presiding officer upon each of the parties. The decision shall be final unless appealed as provided in § 47.63 below.

**§ 47.63 Petition for Review.**

Either party, within 30 days after service of the presiding officer's decision, may file a petition for review with the Administrator. The petition for review shall set forth objections to the conclusions of law and the grounds therefor. Upon receipt of notice of the filing of a petition for review, the presiding officer shall transmit the decision and a certified copy of the record to the Administrator.

**§ 47.64 Administrator's order.**

After considering the petition for review in conjunction with the presiding officer's decision, the Administrator shall issue a final order affirming or reversing the presiding officer's conclusions of law. The Administrator shall cause the order to be served upon the parties.

**§ 47.65 Filing; number of copies.**

Except as otherwise provided, all documents or papers required or authorized to be filed shall be filed in triplicate; *Provided*, That where there are more than two parties to the proceeding, sufficient copies shall be filed so as to provide service upon all the parties.

**§ 47.66 Service; proof of service.**

Copies of all documents or papers required or authorized by these rules to be served on any party to a proceeding shall be served by the presiding officer, or Administrator, or by some other employee of the Department. Except as otherwise provided, service shall be made either by (a) delivering a copy of the document or paper to the person to be served, or to the attorney, or agent of record of such person; (b) by leaving a copy of the document or paper at the principal office or place of business of such person, or of an attorney or agent of record; (c) by registering or certifying and mailing a copy of the document or paper addressed to such person or to the last known residence or principal office or place of business; or (d) in the case of service upon an attorney or agent of record, by mailing, by regular mail, a copy of the document or paper, addressed to the address of record of that person. Proof of service hereunder shall be confirmed by the written statement of the person who actually made the service: *Provided*, That if service is made the Administrator or presiding officer by regular mail, proof of service shall be confirmed by the written statement of the Administrator or presiding officer. The written statement or post office receipt con-



templated therein shall be filed with the presiding officer, or the Administrator and the fact of filing thereof shall be noted in the record of the proceeding.

#### § 47.67 Computation of time.

Saturdays, Sundays, and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That when the time expires on a Saturday, Sunday, or legal holiday, the period shall be extended to include the next following business day.

#### § 47.68 Extensions of time.

The time for filing any document or paper required or authorized herein may be extended by the Administrator or the presiding officer, if request is made prior to or on the final date allowed for such filing, if in the judgment of the Administrator or presiding officer, there is good reason for granting the request.

Done at Washington, D.C., July 12, 1978.

WILLIAM T. MANLEY,  
Acting Administrator.

[FR Doc. 78-19778 Filed 7-17-78; 8:45 am]

[3410-02]

### CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Peach Regulation 15]

#### PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

##### Limitation of Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation contains minimum grade, size and pack requirements for the handling of shipments of fresh peaches from Washington. This regulation takes into consideration the marketing situation facing the Washington peach industry, and is necessary to assure that shipments of peaches will be of suitable quality and size and appropriately packed in the interest of consumers and producers.

EFFECTIVE DATES: July 15, 1978, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Notice was published in the

FEDERAL REGISTER issue of June 12, 1978, (43 FR 25347) that the Department was giving consideration to a proposal which would limit the handling of fresh peaches grown in designated counties in Washington by establishing a regulation under the marketing agreement and Order No. 921 (7 CFR part 921) regulating the handling of fresh peaches grown in designated counties in Washington. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). No comments were filed.

This regulation is based upon appraisal of the current and prospective crop and market conditions. Washington's 1978 commercial peach crop is estimated at 20,500 tons, the same as last year. The regulation, herein specified, is designed to prevent the handling on and after July 15, 1978, of low quality and small size peaches and provide orderly marketing in the interest of producers and consumers, consistent with the objectives of the act.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the committee, and upon other available information, it is hereby found that the limitation of handling of such peaches, as herein provided, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this regulation, with an effective date as herein specified, was published in the FEDERAL REGISTER (43 FR 25347), and no objection to this regulation or such effective date was received; and (2) compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

#### § 921.315 Peach Regulation 15.

Order. (a) During the period July 15, 1978, through July 31, 1979, no handler shall handle any lot of peaches unless such peaches meet the following applicable requirements, or are handled in accordance with paragraph (a)(5) of this section.

(1) *Minimum grade*. Such peaches shall grade at least Washington Extra Fancy Grade: *Provided*, That peaches which grade Washington Fancy Grade or better may be handled if they are packed in the Western lug box or the standard peach box.

(2) *Minimum size*. (i) Such peaches of any variety, except peaches of the Elberta varieties, when packed in any container except the standard peach box, shall measure not less than 2½ inches in diameter;

(ii) Such peaches of any variety when packed in the standard peach box shall measure not less than 2¼ inches in diameter; and

(iii) Such peaches of the Elberta varieties when packed in any container shall measure not less than 2¼ inches in diameter.

(3) *Uniform firmness*. Such peaches in individual containers shall have a reasonably uniform degree of firmness.

(4) *Pack*. (i) Such peaches in loose or jumble packs shall be in containers of a capacity equal to or greater than that of a Western lug box and shall contain not less than 26 pounds net weight of peaches: *Provided*, That such containers of peaches having less than 26 pounds net weight may be handled if such containers are well filled, and

(ii) Such peaches other than peaches in loose or jumble packs in any containers shall meet the standard pack requirements as set forth in the Washington Standards for Peaches (Order No. 1212), or the U.S. Standards for Peaches (7 CFR 51.1210 et seq.).

(5) Notwithstanding any other provisions of this section, any individual shipment of peaches sold by the producer or at an established packinghouse which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 921.41 (Assessments), and of § 921.55 (Inspection and Certification) if:

(i) The shipment consists of peaches sold for home use and not for resale; and

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of peaches.

(b) The terms "Washington Extra Fancy Grade," "Washington Fancy Grade," and "mature" shall have the same meaning as when used in the Washington Standards for Peaches (effective October 18, 1971), issued by the State of Washington Department of Agriculture; the term "loose or jumble pack" shall mean that the peaches are not placed in the container in rows, cups, compartments, or otherwise are not placed in the container in symmetrical order; the term "standard peach box" shall mean a container with inside dimensions of 4¼ to 6 by 11½ by 16 inches; the term "Western lug box" shall mean any container with inside dimensions of 7 by 11½ by 18 inches; the term "well filled" shall mean that the level of fruit is filled at least to the top edge of the container; the term "diameter" shall mean the greatest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end; and terms used in the marketing agreement and order shall, when used herein, have the same meaning as is



given to the respective term in the marketing agreement and order.

(c) Peach Regulation 14 (42 FR 36233) is hereby terminated July 15, 1978.

(Secs. 1-19, 48 Stat. 31, as amended 7 U.S.C. 601-674.)

Dated: July 12, 1978.

CHARLES R. BRADER,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-19777 Filed 7-17-78; 8:45 am]

[3410-37]

# Title 9—Animals and Animal Products

## CHAPTER III—FOOD SAFETY AND QUALITY SERVICE (MEAT AND POULTRY INSPECTION), DEPARTMENT OF AGRICULTURE

### SUBCHAPTER A—MANDATORY MEAT INSPECTION

#### PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

#### PART 320—RECORDS, REGISTRATION, AND REPORTS

#### Cooking Requirements for Cooked Beef and Roast Beef

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations to permit alternative cooking procedures for cooked beef and roast beef. The processing requirements published in the September 2, 1977 FEDERAL REGISTER (42 FR 44217), specified that all cooked beef and roast beef be cooked to a minimum internal temperature of 145° F (63° C). The intent of that rule was to eliminate Salmonella food poisoning caused by the consumption of commercially precooked beef. Its purpose has been accomplished. Recently, several alternative processing procedures were developed in order to permit processing of such product with color characteristics preferred by many consumers while continuing to protect the public from Salmonella food poisoning. Each of the alternative processing procedures meets these safety criteria, and this rule will permit the use of any of these alternative methods.

EFFECTIVE DATE: July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Ronald E. Engel, Acting Deputy Administrator, Science, Food Safety

and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-2326.

## SUPPLEMENTARY INFORMATION:

### BACKGROUND

Cooking requirements for cooked beef and roast beef were published by the Administrator on September 2, 1977 (42 FR 44217) as an emergency measure to prevent outbreaks of human salmonellosis caused by the consumption of commercially prepared cooked beef. These requirements specified that such products be prepared by a cooking procedure that produced a minimum temperature of 145° F (63° C) in all parts of each roast. This procedure was deemed necessary in order to destroy all Salmonella bacteria present in the roast.

Salmonella are common bacteria which are often associated with warm-blooded animals, including man. Many animals which are not clinically ill are nevertheless carriers of these organisms. The physical nature of raw beef roasts is such that the penetration of micro-organisms, including Salmonella, into the deepest portions of the roasts may occur. Gaps in intermuscular fascia, knife cuts, and deep folds are some of the physical features that contribute to such penetration. Deep inoculation of Salmonella bacteria and other micro-organisms may also occur during boning, packing, defrosting, and precook handling of the raw roasts or by the flow of natural juices during the cooking process. A significant public health hazard is created when the cooking procedure for the product fails to kill the Salmonella.

Although the 145° F cooking temperature required by the rule published on September 2, 1977, eliminated the public health hazard, it also resulted in a product which is considered by some members of the public to be overcooked. Many consumers prefer "rare" beef and the popular item of trade is rare beef. Because they wanted to preserve this rare appearance, seven trade associations have funded studies conducted by the American Bacteriological & Chemical Research Corp., which operates an independent research laboratory, to determine safe alternative processing procedures. The experimental design of these studies was reviewed and approved by meat and poultry inspection personnel before they were undertaken. The firm issued two reports—"Fate of Salmonella Inoculated Into Beef for Cooking" (December 19, 1977) and an addendum, "Fate of Salmonella Inoculated Into Beef for Cooking" (January 12, 1978). These documents may be obtained free of charge by writing Dr. Ronald E. Engel, Acting Deputy Administrator, Science, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

These reports demonstrate that alternative processing procedures can provide a number of acceptable time and temperature combinations for preparing cooked beef and roast beef in such a manner that Salmonella bacteria are eliminated. Each alternative processing procedure analyzed in these reports is equal for the purposes of Salmonella destruction to the procedure which has been required. The amended regulation allows a processor to choose one of these alternative processing procedures in producing cooked beef and roast beef. The amended regulation also includes the requirement that records of these alternative processing procedures be kept and requires that processors have sufficient monitoring equipment to assure the accuracy of such processing.

Thermal destruction of bacteria is a function of both time and temperature. At higher temperatures bacterial death occurs within a short time, whereas at lower temperatures longer exposures are required to destroy equivalent bacterial numbers. The reports provide data on alternative cooking procedures which yield equivalent lethality for salmonellae to that achieved when roasts are cooked to an internal temperature of 145° F.

Though the rate of thermal destruction of Salmonella is a function of time and temperature, as explained above, the change in color of muscle myoglobin in roasts from red to gray is affected by a different time temperature relationship. A temperature of 145° F (63° C) causes a rapid change of color of the myoglobin, whereas a temperature of 135° F for prolonged periods produce little color change. Thus it is possible to destroy Salmonella by exposing roasts to low heat for extended time periods without causing the meat to turn gray or appear overcooked.

In addition to the documentation of these time and temperature relationships, these studies show that moisture is also important in the death of Salmonella. Salmonella are much more resistant to heat in a dry environment. This becomes very important in beef that is being dry roasted in ovens operated at low temperatures.

### COMMENTS

A proposal for alternative processing procedures for preparing cooked beef and roast beef was published in the May 2, 1978 FEDERAL REGISTER (43 FR 18681). The document proposed 17 alternative time and temperature processes to the processing requirements published in the September 2, 1977 FEDERAL REGISTER (42 FR 44217), which specified that all such product be prepared by a cooking procedure that produces a minimum internal temperature of 145° F (63° C). The



purpose of the proposal was to permit the use of lower cooking temperatures which result in the pink or red coloration characteristic of medium or rare beef, while simultaneously providing equal safety from *Salmonella* bacteria.

There were 41 responses to the proposal, all of which had relevant comments.

A number of commenters expressed general support for the alternative procedures, as proposed, in order to either prepare or purchase rare beef without a risk of it containing *Salmonella*.

Several commenters questioned the need for vacuum packaging in moist cooking as proposed in paragraph (c)(1). Information was provided on the use of moisture impermeable bags with air removed as being sufficient to accomplish proper humidification without vacuum packaging. This is a valid comment, and the adoption of this suggestion will allow some processors to prepare product without the purchase of additional equipment. Thus, we have amended paragraph (c)(1) of the final rule to permit the use of such process.

One commenter said that, if the center of the meat mass does not reach 140° F no matter what process of cooking is used, there is a probability of product souring and bacterial contamination occurring once it is in the hands of the consumer. The Administrator has determined that the utilization of time factors in the specified processes below 140° F (60° C), and prompt cooling of the cooked product will both render the product safe from *Salmonella* and prevent souring.

One commenter questioned whether this document will change the definition of roast beef. The Department has not established a standard of identity or composition for roast beef which might be changed by this rule. Furthermore, the Department's policy has been to approve labels for products known as "roast beef" when such products are cooked in a dry oven, but not when they are cooked in bags immersed in water. Beef cooked in a bag immersed in water is labeled as "cooked beef." The Administrator has determined that the requirement of the maintenance of high relative humidity during 25 percent of the processing time during dry oven cooking will not significantly alter the characteristics of product labeled and known as roast beef. Therefore the publication of this rule will not require any change in labeling policy. However, the Department, in an attempt to avoid confusion on this point, has revised some of the terminology used in the rule to clarify that products in their raw state are known as beef roasts and that they may be identified as either "roast beef" or "cooked beef"

depending upon the manner in which they are processed.

One equipment manufacturer and a food service operator said that the requirement included in paragraph (c)(2)(ii) of the proposed rule for maintaining 90 percent relative humidity needs clarification, and should specify which part of the oven should be measured for this purpose. Documented consultations with ABC Research Laboratories show that, during experiments which simulated smokehouse conditions frequently used by the industry, the humidity was measured in the smokehouse chamber. During experiments with a sealed oven similar to ovens used in the processing of such roasts, the humidity was measured in the exit vent. In both groups of experiments, the two methods of humidification resulted in the successful destruction of *Salmonella*. Accordingly, this rule has been changed to allow for measurement in either the chamber or the exit vent.

One commenter expressed concern that vacuum packaging in impermeable film prior to water immersion or oven cooking provides an anaerobic condition conducive to the growth of *Clostridium botulinum* and *Clostridium perfringens*. The Administrator has evaluated this comment and determined that the processing temperatures listed are above the maximum growth temperatures for these two organisms so that processing temperatures prevent growth. Similarly, adequate cooking procedures as required for this product by FSQS prevent their growth. No evidence exists that packaging in the manner prescribed results in a safety hazard which cannot be controlled through good commercial practices.

Several commenters asked why other bacteria, intestinal protozoa, and helminths were not considered in the proposal. The Administrator has reviewed those comments and notes that FSQS temperature requirements for preparing cooked beef and roast beef began in September 1977. Prior to that, such products were prepared in volume at temperatures and times below those specified in this rule. Outbreaks of salmonellosis in humans occurred, but these were brought under control after the promulgation of the September 1977 rule. No evidence of other human health hazards associated with the consumption of such products have been brought to our attention during the many decades of its production. Consequently, there does not appear to be a need for further regulation of this process.

One commenter noted that the statement in § 318.17, item (b) implies that one of the procedures provided in the table is all that is necessary as an alternative processing procedure when in fact there are additional require-

ments imposed under paragraphs (c) and (d). In response to this comment, the paragraph has been modified for clarity.

One commenter suggests that beef cooked to temperatures below 135° F (57.2° C) should not be described as cooked. The Administrator has determined that consumer preference for the color characteristics of beef varies both within and between geographic regions of the United States. Prior to the promulgation of the September 1977 rule, the product was characteristically cooked in volume to internal temperatures of 125°-130° F with overall consumer acceptance. Accordingly, production at temperatures of 130° F and above will continue to be permitted since these are safe and satisfy consumer preferences.

A number of commenters questioned the adequacy of the controls to be required by paragraph (d) of the proposed rule. One commenter noted that, to assure accuracy within the 1° F and 1 minute proposed, only thermocouples and a recording potentiometer would provide the reliability and reproducibility needed. The same commenter suggested that FSQS specify approved monitoring equipment, and specify the exact amount of roasts to be tested for monitoring purposes. Another commenter asked if there is a sufficient margin of safety allowed in the tables for measuring devices which are inaccurate to some degree. Another commenter wanted to know whether it will be necessary to have an inspector on the premises at all times during long cooking cycles, or whether he would accept records from recording devices. The Administrator has reviewed those comments and determined that the margin of safety allowed in the tables is sufficient to accommodate inaccuracies in measuring devices within the tolerances established by this section, and that it is necessary and reasonable to expect processors using the alternative procedures to have instruments with accuracies of 1° F and 1 minute as described. Continuous recording devices with these accuracies are acceptable for subsequent review by inspection personnel. Paragraph (d) has been modified accordingly. Due to the large number of instruments which may be used to fulfill the needs of this rule, it does not appear to be practical to devise and include in this document an approval system. Most instrument manufacturers specify the accuracy of their units and procedures for recalibration. This information will be made available to the inspector. He will use thermometers and time pieces to verify the accuracy of the controls. In regard to the degree of monitoring necessary, it is not intended that the temperature of each roast must be measured. It will be the responsibility



of the processor to determine variations within ovens or water baths, and determine the coldest areas to determine temperatures. Information of this nature, when made available to the inspector, will justify reduced monitoring.

Paragraph (d) of the rule has also been changed to require the use of equipment to insure that roasts prepared under the procedures specified in paragraphs (b) and (c) not contact each other during processing. This change is in accordance with both the intent of the original proposal and is being added to insure the accurate monitoring of the temperatures of roasts prepared in accordance with these specifications.

Several commenters showed concern about the growth of *C. perfringens* under the alternative processes, particularly within the long time period associated with 128° and 129° F procedures. The Administrator has reviewed each of these comments and finds that the 128° and 129° F procedures do not pose a substantial threat of enhancing *C. perfringens* growth. However, processing at these two temperatures may require prolonged exposure of the cooked beef and roast beef to lower temperatures before they attain the specified temperature. This may create a slight risk of a safety hazard. Accordingly, these two temperatures have been stricken from the table for added safety.

On the basis of the foregoing, parts 318 and 320 of the Federal meat inspection regulations are amended to read as follows:

1. Section 318.17 (9 CFR 318.17) is amended to read as follows:

**§ 318.17 Cooking requirements for cooked beef and roast beef.**

(a) Cooked beef and roast beef shall be prepared by a cooking procedure that produces a minimum temperature of 145° F (63° C) in all parts of each roast or prepared as provided in paragraphs (b) and (c) of this section.

(b) Cooked beef may also be prepared by any one of the cooking procedures described in the following table and in paragraphs (c)(1) and (d), and roast beef may also be prepared by any one of the cooking procedures described in the following tables and in paragraph (c)(2) and (d) provided that the procedure produces and maintains the minimum temperature required, in all parts of each roast, for at least the stated period:

TABLE FOR ALTERNATIVE PROCESSING PROCEDURES FOR COOKED BEEF AND ROAST BEEF

Minimum internal temperature		Minimum processing time in minutes
°F	°C	
130	54.4	121
131	55.0	97
132	55.6	77
133	56.1	62
134	56.7	47
135	57.2	37
136	57.8	32
137	58.4	24
138	58.9	19
139	59.5	15
140	60.0	12
141	60.6	10
142	61.1	8
143	61.7	6
144	62.2	5

(c)(1) Bag cook: Each roast to be moist cooked shall be placed in a moisture impermeable film, either vacuum packaged or excess air removed, and the bag sealed prior to immersion cooking in a water bath or cooking in an oven.

(2)(i) Unbagged cook (netted or racked roasts): Roasts processed entirely by dry heat must weigh 10 pounds or more before processing and must be dry cooked in an oven maintained at 250° F (121° C) or higher throughout the process; or

(ii) An oven temperature less than 250° F (121° C) may be used for dry cooking of roasts of any size provided that the relative humidity, as measured in either the chamber or exit vent of the oven in which they are prepared, is greater than 90 percent for at least 25 percent of the total cooking time for the process, but in no case for a lesser period than 1 hour. This relatively humidity may be achieved by use of steam injection or by sealed ovens capable of producing and maintaining the required 90 percent relative humidity.

(d) A processor who selects any of the alternative procedures specified in paragraphs (b) and (c) of this section must have equipment designed to insure that beef roasts do not contact each other during processing and shall have sufficient monitoring equipment to assure that the time (within 1 minute), temperature (within 1° F), and relative humidity (within 5 percent) limits required by this process are being met. The processor shall provide proper recording devices, and make the data from these available to the Food Safety and Quality Service inspection officials upon request, as provided in Part 320 of the regulations in this subchapter. Continuous recording devices with the prescribed accuracies will be acceptable for all product prepared under paragraphs (a) and (b).

2. Section 320.1(b) is amended by adding the following subparagraph (4):

**§ 320.1 Records required to be kept.**

(b) \* \* \*

(4) Records of processing procedures for cooked beef and roast beef as required in § 318.17(d).

NOTE.—An impact analysis statement is available from the Food Safety and Quality Service.

Done at Washington, D.C., on July 6, 1978. Robert Angelotti,  
Administrator, Food  
Safety and Quality Service.

[FR Doc. 78-19658 Filed 7-17-78; 8:45 am]

[7590-01]

**Title 10—Energy**

**CHAPTER I—NUCLEAR REGULATORY COMMISSION**

**PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS**

**Notice of Hearing**

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its rules of practice to provide specifically for thirty (30) days FEDERAL REGISTER notice of the time and place of the initial hearings to be held on applications seeking construction permits for production or utilization facilities. Once this notice has been given, the presiding officer may reschedule the commencement of the hearing for a later date or reconvene a recessed hearing without again providing thirty (30) days notice.

EFFECTIVE DATE: July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Trip Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 202-634-1465.

SUPPLEMENTARY INFORMATION: Because this amendment relates to agency procedure, good cause exists for omitting notice of proposed rule-making and public procedure thereon. It also may become effective without the customary 30-day notice. Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal